
(2002) 08 PAT CK 0057
In the Patna High Court
Case No : C.W.J.C. No. 1851 of 2000

Paras Nath Rai and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 09-08-2002

Acts Referred:

Citation : (2002) 08 PAT CK 0057

Judgement

S.K. Katriar, J.—This writ petition is directed against the order dated 17.12.1999 (Annexure-1), passed by the learned Director of Consolidation, Bihar, Patna, in Revision Case No. 151 of 1978, Revision Case No. 15 of 1975, and Revision Case No. 624 of 1977, whereby he has dismissed the three revision applications preferred by the present petitioners, and has held that respondent No. 5 herein Umrawati Devi) is the daughter of Dhyani Rai, and not that of Anant Rai. He has so concluded on the basis of the finding to that effect recorded in the judgment of the Civil Court In Title Suit No. 123 of 1963, and after noticing the notification dated 2.11.1993 (Annexure-A to the counter-affidavit of respondent No, 5) u/s 4-A of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act (hereinafter referred to as "the Act"). The revisional Court has affirmed the appellate order dated 10.3.1975 (Annexure-4), passed by the learned Deputy Director of Consolidation, Bhojpur, Rohtas, Ara, in Appeal No 155 of 1974 Smt. Umrawati Devi v. Sfieshnath Rai and Ors. and the analogous Appeal No. 114 of 1974 Smt Umrawati Devi v. Dhankalia and Ors.

2. The following lands situate within Mohanpur Anchal of Kaimur District are the subject matter of the present proceedings:

Land in Dispute Khata No. Area Villages 142 6.58 Lakhanpatti 95 6.68
Borhaulia 10 1.07 Dhanantpur

The following generalogy has been affirmed by the impugned order which is disputed by the petitioners. The main dispute between the parties in this protracted litigation is that, according to the petitioners, respondent No. 5 is the daughter of Anant Rai. On the other hand, according to respondent No. 5, she is

the daughter of Dhyani Rai:

Lal	Chand	Rai
-----		Shakuni
Rai Bail Rai Anant Rai -----		Ramjatan
Rai Dhyani (Petitioner) (Umrawati Devi) (Resp. No. 5)		

3. Title Suit No. 123 of 1963 was instituted by Sheshnath Rai (one of the sons of Ram Jatna Rai) and others in the Civil Court at Bhojpur for partition of the house and shown standing over plot Nos. 593 and 594 in village Katra. Their further case was that the property in question was recorded in the name of Bali Rai and, therefore, his descendants alone were entitled to share in the suit property. Respondent No. 5 herein is the daughter of Anant Rai and, therefore, she is entitled to a share in the suit property. On the other hand, the case of respondent No. 5 is that she is daughter of Dhyani Rai and, therefore, she is entitled to a share in the suit property. The suit on contest was dismissed by judgment and order dated 4.4.1968 (Annexure-8), wherein it was, inter alia, held that respondent No. 5 is the daughter of Dhyani Rai and is entitled to share in the suit property. The plaintiffs preferred Title Appeal No. 30/41 of 1968-71 against the said judgment and decree dated 4.4.1968 (Annexure-8). During the pendency of the appeal, the State Government issued notification No. 1168, dated 26.11.1970, in terms of Section 3(1) of the Act which was a declaration by the State Government of its intention to make scheme for consolidation of holding. The consequence of such a notification in terms of Section 3(1) of the Act is indicated in Section 4(c) of the Act which, in substance, lays down that every proceeding for correction of declaration of rights or interest in any land lying in the area or for declaration or adjudication of any other right in regard to which proceedings can or ought to be taken under this Act, pending before any Court or authority whether of the first instance or of appeal, reference or revision, shall, on an order being passed in that behalf by the Court or authority before whom such suit or proceeding is pending, stand abated. In view of the said notification¹ dated 26.11.1970, the lands were within the sweep of consolidation proceedings. Respondent No. 5 filed objections before the Consolidation Officer, Mohania, which were registered as Case No. 26/73-74 and Case No. 51/73-74. The Consolidation Officer had taken the witnesses of the opposite parties (the petitioners herein) of a temple and recorded their evidence, overruled the objections of respondent No. 5 herein by his order dated 23.3.1974, held that respondent No. 5 is the daughter of Ahant Rai and, therefore, is not entitled to a share in the suit property. The present petitioners, who were the plaintiffs-appellants in the said Title Appeal Nos. 30/41 of 1968-79, filed an application under Order XXIII, Rule 1 CPC for withdrawal of the appeal with permission to institute a fresh suit. By order dated 27.2.1975 (Annexure-B to the counter-affidavit of Respondent No. 5), it was held that on account of non-substitution of the heirs of Panna Devi, the whole appeal had become incompetent and it had abated against them. The lower appellate Court held that a vested right had come into existence in favour of the respondents before the

prayer for withdrawal of the petition was made. The appeal was permitted to be withdrawn, and permission to file a fresh suit was rejected. Against the said order dated 23.3.1974, passed by the Consolidation Officer, Mohania, respondent No. 5 herein and others preferred Appeal No. 55 of 1974 (against the order in Case No. 26 of 1973-74), and Appeal No. 114 of 1974 (against the order in Case No. 51 of 1973-74), which were allowed by order dated 10.3.1975 (Annexure-2), passed by the Deputy Director of Consolidation, Bhojpur, Rohtas, Ara, whereby the appeals were allowed and it was held that respondent No. 5 is the daughter of Dhyani Rai in view of the finding to that effect recorded in the judgment in Title Suit No. 123 of 1993. The present petitioners filed Revision Case No. 151 of 1975 and Revision Case No. 152 of 1975 against the said appellate order dated 10.3.1975 (Annexure-2), which were dismissed by the Deputy Director of Consolidation, Patna, by his order dated 1.9.1978. Against the said judgment dated 27.2.1995 (Annexure-B), passed by the learned Third Additional Subordinate Judge, the present petitioners preferred Civil Revision No. 559 of 1975, in this Court which was allowed by the order dated 4.1.1980 (Annexure-7), and the said order dated 27.2.1975 (Annexure-B), was set aside, and the matter was remitted back to the lower appellate Court for a fresh judgment in accordance with law and the observations made therein. Pursuant to the order dated 4.1.1980 (Annexure-7), passed by this Court in Civil Revision No. 559 of 1975, the learned Subordinate Judge, Bhabhua, took up Title Appeal No. 30/ 41/23 of 1968/71/80, wherein he held that the appellants were not taking any interest in the appeal and also held that the appeal had abated in terms of Order XXII, of the Code of Civil Procedure, vide order dated 26.11.1980 (Annexure-9). In the meantime, the present petitioners had challenged the said order dated 1.9.1978, passed by the Deputy Director of Consolidation, passed in Revision Case No. 151 of 1975 and 151 of 1975, by preferring CWJC Nos. 1938 of 1981 and 1640 of 1981 in this Court, which were allowed by order dated 14.5.1998 (Annexure-6), the said order dated 1.9.1978, passed in Revision Case No. 151 of 1975 and 152 of 1975, was set aside on the ground that the Deputy Director of Consolidation cannot exercise the revisional jurisdiction under the Act, and remitted the matter back to the Director of Consolidation for fresh consideration in accordance with law. In the meantime, the State Government issued notification in terms of Section 4-A of the Act, cancelling the notification u/s 3 of the Act. Pursuant to the said order dated 14.5.1998 (Annexure-6), passed by this Court, the learned Director of Consolidation has passed the impugned order, whereby he has dismissed Revision Application No. 151 of 1975 and 152 of 1975, and he has held that respondent No. 5 (Umrawati Devi) is the daughter of Dhyani Rai and not Anant Rai after noticing the said notification dated 2.11.1993 in terms of Section 4-A of the Act. He has recorded the finding in view of the judgment dated 4.4.1968 (Annexure-8) of the learned Munsif in Title Partition Suit No. 123 of 1963. The net result, therefore, is that respondent No. 5 is entitled to a share in the property in question, being a descendant of Bail Rai.

4. While assailing the validity of the impugned judgment, learned Counsel for the

petitioners submits that in view of abatement of Title Appeal No. 3 of 1968, the Title Suit also stood abated with the result that the finding recorded in the judgment of the trial Court came to an end. Earned Counsel for the petitioners places reliance on the provisions of Section 4(c) and the third proviso thereunder, which is to the effect that once a notification u/s 3(1) of the Act has been promulgated, all proceedings including the suit, appeal, revision abate in terms of Section 4(c) of the Act. He relies on the Division Bench judgment of this Court in Chowdhary Dinanath Singh and Others Vs. Bhawani Dayal Gupta and Others, as well as the judgment of the Supreme Court reported in Satyanarayan Prasad Sah and Others Vs. State of Bihar and Another, Counsel submits in the alternative that the authorities under the Act should have considered the materials on record which had come before the Consolidation Officer during the course of consideration of the objection petition of respondent No. 5 before passing the appellate or the revisional order. He relies on the judgment of this Court reported in Raghu Gope @ Raghu Mahto and Others Vs. State of Bihar,

5. Earned Counsel for respondent No. 5 supported the impugned order and submitted that in view of the history of the litigation, the aforesaid order dated 26.11.1980 (Annexure-9), passed in Title Appeal No. 30/68, is in substance an order of dismissal for non-prosecution in terms of Order XLI, Rule 17 CPC. He further submits that it was also an order of abatement in terms of Order XXII, CPC, rather than abatement in terms of Section 4(c) of the Act. He relies on the following reported judgments:

(1) Anjula Verma Vs. Sudhir Verma,

Ajit Kumar Singh v. Chiranjibi Lal

(2) 1979 BBCJ 259 (14)

Ramkrit v. State of Bihar

(3) 1980 BBCJ 252

Narendra Kumar Verma v. State of Bihar

Earned Counsel further submits that the said order dated 26.11.1990 (Annexure-9) states that the cross-appeal had also been dismissed. He next submits that in view of the notification in terms of Section 4(A) of the Act, the notification u/s 3(1) of the Act has been cancelled and, therefore, the entire proceeding under the Act from the inception will be deemed in law to have been wiped off. He relies on the judgment reported in S.H. Rangappa Vs. State of Karnataka and Another, It is accordingly submitted that the only valid and binding order which survives is the order dated 4.4.1968 (Annexure-8), passed by the learned Munsif in T.S. No. 123 of 1963. Therefore, there is no question of consideration of the materials which came on record before the Consolidation Officer which, in any case, was no evidence in the eye of law. He lastly submits that the issues are concluded by findings of facts, and the petitioners may institute a Civil suit, if so advised, and if permissible in law.

6. On a perusal of the materials on record and consideration of the submission advanced by earned Counsel for the parties, it appears to me that the writ petition is fit, to be dismissed. In so far as the petitioner's first submission is concerned that in view of abatement of the title appeal, the title suit also stood abated and the findings recorded in the judgment of the suit could not have been relied upon by the authorities under the Act, earned Counsel has relied on the provisions of Section 4(c) and the third proviso there under. The contention overlooks the notification dated 2.11.1993 (Annexure-A), issued with respect to the area in question u/s 4-A of the Act which reads as follows:

4-A. Cancellation of notification u/s 3. - (1) It shall be lawful for State Government at any time to cancel the notification made u/s 3 in respect of the whole or part of the area specified therein.

(2) Where a notification has been cancelled in respect of any unit under Sub-section (1) such area shall, subject to the final orders relating to the correction of land record, if any, passed on or before the date of such cancellation ceases to be under consolidation operations with effect from the date of cancellation.

I had the occasion to deal with this provision in the case of Raghvendra Singh v. State of Bihar and Ors. (supra), where the effect of notifications u/s 4-A and 26-A have been considered. Paragraph-8 of the judgment is relevant in the-present context and is set out here in below for the facility of quick reference:

...once notification u/s 4-A(1) of the Act was issued, cancelling the notification made u/s 3, the entire consolidation proceedings which had taken place till then was wiped off. The contention advanced on behalf of the petitioner that the notification u/s 4-A(1) of the Act is prospective in operation is stated only to be rejected. The same would make the position anomalous and the Act unworkable, say, for example, in a situation where the consolidation proceedings are halfway through and the notification u/s 4-A(1) has been issued, the petitioner's contention would mean that half-prepared chaks would go to the chak holder, and the balance half of the contributing land would go back to the revisional survey Kantian holders. In my view, the obvious legal consequence of the notification u/s 4-A(1) of the Act is that the original owners of the lands have contributed for creation of the chaks become owners of their lands, as if the chaks had never been created. Secondly, the consolidation proceedings would be deemed in law to have completed after the scheme is finally approved u/s 13 of the Bihar Act, and the consequential steps of issuance of certificate of transfer in terms of Section 15 of the Bihar Act have been issued giving rise to the legal right in favour of the chak-holder in terms of Sections 16 and 17 of the Bihar Act. The meaning and content of Section 4-A(1) of the Act comes out clearly when read in juxtaposition with Section 26-A of the Act. "The former provides for complete cancellation of the notification u/s 3 and the consolidation proceedings which have taken place till then. On the other hand, the provision of Section 26-A contemplates a situation of successful completion of the consolidation proceeding. The scheme of the Act does not support the concept of golden mean,

thus far and no more, as has been submitted by learned Counsel for the petitioner. Learned Government Pleader is, therefore, right in placing reliance on the judgment of this Court in the case of Bishuni Rai (supra). I must sound a note of caution that the judgment was really under the provisions of Bihar Land Reforms (Fixation of Ceiling area and Acquisition of Surplus Land) Act, 1961, but the same in principle and spirit supports the contention advanced by the learned Government Pleader." In other words, once a notification u/s 4-A of the Act has been issued, it will automatically follow that the notification u/s 3(1) will be deemed never to have taken place and the parties are reverted to the position of status quo ante. The contentions advanced on behalf of the petitioners would have merited consideration if the State Government had issued a notification u/s 26-A of the Act which means successful completion of the consolidation proceedings and in which case the question would have arisen whether or not the findings of the Civil Court ought to have been taken into account by the consolidation authorities. Furthermore, even in a situation where notification in terms of Section 4-A of the Act were not issued, Section 37 of the Act has never barred a suit in Civil Court for adjudication of pure question of title, as has happened in the present case when TS No. 123 of 1963 was adjudicated. The bar has been to set aside or over any decision or order under the Act, as has been held by this Court in Narendra Kumar Verma v. State of Bihar (supra). In that view of the matter, the other decisions cited by learned Counsel for the parties are not relevant because those were rendered in a situation where there was no notification in terms of Section 4-A of the Act. The judgments in the case of Satyanarayan Prasad Sah v. State of Bihar (supra) and Choudhary Dina Nath Singh v. Bhawani Dayal Gupta and Ors. (supra), relied on by learned Counsel for the petitioners, is not relevant in the present context because the same dealt with the effect of Section 4-B and 4-C of the Act and not with that of a notification u/s 4-A of the Act. The Special Bench Judgment of this Court in the case of Ramkrit v. State of Bihar and Ors., relied on by learned Counsel for respondent No. 5, is also inapplicable to the facts and circumstances of the present case because the same dealt with the effect of Section 3 read with Section 4(c) and Section 26-A of the Act, and did not deal with the effect of Section 4-A of the Act.

7. As is manifest from a plain reading of the judgment dated 26.11.1980 (Annexure-9), passed by the learned Subordinate Judge, Bhabhua, in Title Appeal No. 30/68, the appeal had been dismissed on two grounds, namely, for non-prosecution of the appeal by the appellants (the petitioners herein) in terms of Order XLI, Rule 17, and abatement of the appeal in terms of Order XXII of the CPC and has become final. Learned Counsel for respondent No. 5 has, therefore, rightly relied on the judgment of the Supreme Court in Ajit Kumar v. Chiranjibi Lal (supra).

8. Learned Counsel for the petitioners next contended in the alternative that the appellate authority and the revisional authority under the Act ought to have considered the materials which have come on record before the learned

Consolidation Officer and not merely the findings of the Civil Court. He relied on the judgment of a learned Single Judge of this Court in *Raghu Mahto v. State of Bihar and Ors.* (supra). The same is inapplicable to the facts and circumstances of the present case for the reasons indicated hereinabove. Once notification u/s 4-A of the Act has been issued, the entire consolidation proceeding from the very inception is wiped off as if the same had never taken place, and the parties are relegated to the position of Status Quo Ante. In that view of the matter, the entire proceeding of the Consolidation Officer including the evidence that had come on record before him also become no part in law. The judgment of this Court in *Raghu Mahto v. State of Bihar* (supra), relied on by learned Counsel for the petitioners, is once again inapplicable in the present case because there was no notification in terms of Section 4-A of the Act and the consolidation proceedings were in progress. Furthermore, the manner in which the evidence had come on record does not inspire confidence. It appears from pleadings of the parties that the learned Consolidation Officer had taken the witnesses of the present petitioners to a temple and recorded their evidence. I would, therefore, have no hesitation in rejecting, the same. Therefore, the appellate authority and the revisional authority have rightly relied on the findings in the suit and the appeal which have become final.

9. In that view of the matter, this writ petition is dismissed. I find no infirmity in the impugned order. The learned appellate authority and revisional authority under the Act have not erred in relying on the findings recorded by the Civil Court. In the circumstances of the case however, there shall be no order as to costs.